

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF AGRICULTURE

In the Matter of the Suspension of
Permit to Sell Grade A Milk for
Jerry Snow, Route 2, Box 65,
Kasson, MN 55944

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Allen E. Giles on March 4, 1993, in Conference Room 1 of the Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota.

The parties to this proceeding are the Minnesota Department of Agriculture, Dairy and Livestock Division (hereinafter also referred to as the "Department") and Mr. Jerry Snow.

Appearances: Paul A. Strandberg, Special Assistant Attorney General, Suite 200, 520 Lafayette Road, St. Paul, Minnesota 55155, appeared on behalf of the Department. William P. Skemp, William Skemp Law Firm, 505 King Street, Suite 209, P.O. Box 397, LaCrosse, Wisconsin 54602, appeared on behalf of Mr. Jerry Snow.

The record in this proceeding closed on May 5, 1993, upon the receipt by the Administrative law Judge of the letter brief submitted on behalf of Mr. Jerry Snow.

This Report is a recommendation, not a final decision. The Commissioner of Agriculture will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final decision of the Commissioner of Agriculture shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner of Agriculture. Parties should contact Commissioner Elton R. Redalen, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Whether the administrative suspension of Jerry Snow's permit to sell Grade A pasteurized milk is reasonable and authorized by law.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Jerry Snow operates a dairy farm in southeastern Minnesota near Kasson, Minnesota. His residence, a short distance from the farm, has a mailing address of Route 2, P.O. Box 65, Kasson, Minnesota 55944. Mr. Snow has approximately 30 head of cattle and farms about 500 acres. He has been a dairy farmer for 32 years. Testimony of Mr. Snow.

2. To ensure that milk delivered to the market is wholesome, every milk producer, milk distributor, milk hauler and milk plant involved in the production, processing, handling or selling of Grade A pasteurized milk must hold a license or permit. Dairy producers licensed to market Grade A pasteurized milk are inspected approximately every six months. The inspections are not announced in advance. Testimony of Mr. Krim.

3. The Minnesota Department of Agriculture, Dairy Division, has the duty of overseeing the dairy inspection program in Minnesota. The Grade A pasteurized milk inspection program has been in effect since approximately 1950; it is a cooperative effort of the milk industry, the Federal Drug Administration and the states to ensure a wholesome milk supply by use of an inspection program that is uniformly applied around the United States by way of the "Grade A Pasteurized Milk Ordinance". Grade A pasteurized milk is milk in fluid form sold to the public as a beverage, cottage cheese, sour cream or half and half. Testimony of Mr. Krim.

4. Prior to February 24, 1993, Mr. Snow was certified to sell Grade A pasteurized milk. As a condition of selling Grade A pasteurized milk Mr. Snow's dairy production operation is subject to periodic inspection by sanitarians from the Department.

5. As a result of inspections at Mr. Snow's farm in December, 1991 and September, October, 1992, Mr. Snow believed that he was being unfairly treated by the Department inspector assigned to inspect his farm, Mr. Neil Scott. He complained to the Department and voiced the specifics of his complaint to Commissioner Elton Redalen. Exhibits 4, 5, 7 and 8 show the results of previous inspections.

6. As a result of the complaints against Mr. Scott, at the next inspection of the Snow farm, Mr. Scott was accompanied by his supervisors. Approximately six months later on February 19, 1993, Mr. Scott returned, he was accompanied by Michael H. Krim, Assistant Director, Dairy Division, Department of Agriculture, and Greg Pittman, Mr. Scott's immediate supervisor. Mr. Scott traveled separately from Mr. Krim and Mr. Pittman. When Mr. Scott was near the farm he called from Dodge Center, Minnesota to let Mr. Snow know that they were coming for an inspection.

7. The inspectors arrived at the Snow farm at approximately 11:00 a.m. Neil Scott conducted the inspection, he was followed around by Messrs. Krim and Pittman who reviewed his inspection. Mr. Snow arrived at the farm while the inspection was in progress. Exhibit 1 is the inspection report for the February 19, 1993 inspection of the Snow farm. It shows several violations that require corrections. The number of violations required a reinspection by the Department.

8. The inspection was concluded at approximately 11:30 a.m. Mr. Snow was upset that a reinspection was required. He desired to photograph the violation areas and the presence of 2 State of Minnesota cars parked in his driveway. Mr. Snow asked the inspectors to wait at the farm while he returned home to pick up a camera. All three inspectors waited while Mr. Snow went to pick up his camera. When Mr. Snow returned he was preceded by his wife who was driving another vehicle. She parked in the driveway in front of Mr. Snow's truck.

9. Upon returning Mr. Snow realized that the camera he returned with did not have film so it was necessary for Mrs. Snow to leave the farm to obtain film for the camera. Mr. Snow backed his truck out of the driveway to allow his wife to leave the farm to obtain some film. He reparked his truck in the driveway in a manner so as to block movement of the two State cars.

10. Mr. Pittman asked Mr. Snow to move his truck to allow the inspectors to drive away. Mr. Snow ignored him, refused to respond and did not move his truck. Mr. Snow knew that the inspectors wanted to leave. Instead of moving his truck he set about doing "busy work" in the dairy barn. Testimony of Mr. Pittman .

11. There was a rifle in the entryway to the milk house. Ex. 2H. The rifle was in plain view of anyone who went into the milk house.

12. The inspectors were concerned about their safety. At about five to ten minutes before noon, they left the Snow farm on foot and hitched a ride into town.

13. After arriving in town the inspectors made a telephone call from a restaurant to the Rock Dell milk plant, the processing facility for milk from Mr. Snow's farm. They asked someone at the Rock Dell milk plant to speak to Mr. Snow to help them retrieve the automobiles. A representative of the Rock Dell plant spoke with Mr. Snow at about 1:00 p.m., informed him that the inspectors requested that he move his truck and if he didn't move his truck the inspectors would contact the sheriff for assistance. Mr. Snow continued to refuse to move his truck.

14. At about 4:00 p.m. the local sheriff, other law enforcement officials and the inspectors arrived on the road in front of Mr. Snow's farm. Mr. Snow's truck continued to be parked in the farm's driveway blocking the egress of the State of Minnesota cars.

15. The law enforcement officers went on to the farm, spoke with Mr. Snow for approximately half an hour. Afterward they and Mr. Snow returned to the road to speak to the inspectors. At that time Mr. Snow offered to move his truck if the inspectors gave him the date they would return for

reinspection.

16. The inspectors were reluctant to give a date for reinspection because the Department's policy is to not give advanced notice of any inspection. However, because of the circumstances and a desire to resolve the impasse, the inspectors indicated that a reinspection date would be the following Wednesday, February 24, 1993, however, they could not commit to the date because the matter would be ultimately set by someone in St. Paul. At that point Mr. Snow removed his truck. It was approximately 4:30 p.m.

17. There was tension and anxiety during the February 19 inspection of the Snow farm. Mr. Snow increased the tension and anxiety level by refusing to remove his truck and failing to explain the presence of the firearm at the entry way to the milk house.

18. Mr. Snow's blockade of the state cars prevented other inspections that would have been done in the afternoon of February 19, 1993. Testimony of Mr. Scott and Mr. Pittman.

19. On February 24, 1993, a letter was sent to Mr. Snow informing him that his license to sell Grade A pasteurized milk was suspended as a result of the actions that occurred on Friday, February 19, 1993. The Department agreed to reinstate Mr. Snow's Grade A permit if he provided written assurance that inspectors would be allowed to perform their duties without interference of any kind upon return to the Snow farm. Ex. 3.

20. After the suspension Mr. Snow continues to sell his milk as Grade B milk or "manufacturing grade" milk at a loss of approximately \$1.00 per 100 pounds of milk. Testimony of Mr. Snow and Mr. Krim.

21. On Friday, February 26, 1993, Mr. Snow received the letter suspending his permit to sell Grade A pasteurized milk. The letter also informed him that he could request a hearing. A hearing was requested by Mr. Snow's attorney, Mr. William Skemp on February 26, 1993. Counsel for the Department and Mr. Skemp mutually agreed that a hearing on the suspension would be held on March 4, 1993 at 1:00 p.m. in St. Paul, Minnesota.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSION\$

1. The Minnesota Department of Agriculture and the Administrative Law Judge have jurisdiction over the subject matter of the hearing pursuant to Minn. Stat. 14.57 - 14.62, 32.021, 32.394, subds. 4 and 5 (1992), and Minn. Rules Pt. 1530.0750, subp. 1, which incorporates the "Grade A Pasteurized Milk Ordinance" of the United States Department of Health and Human Services.

2. The Minnesota Department of Agriculture gave proper notice of the hearing in this matter, has fulfilled all relevant, substantive and procedural requirements of law and rule and the Department has the authority to take the action proposed.

3. The burden of proof is upon the Department, which must prove the charges in the Notice and Order for Hearing by a preponderance of the evidence. Minn. Rules Pt. 1400.7300, subp. 5; Application of City of White Bear Lake, 311 Minn. 146, 247 N.W.2d 901, 904 (1976).

4. Minn. Stat. 32.394, subd. 5 authorizes the Commissioner to suspend a permit "for interference with inspection". Section 3 of the Grade A

Pasteurized Milk Ordinance authorizes the Department as a "regulatory agency" to suspend a permit to sell Grade A pasteurized milk "in any case of a willful refusal to permit authorized inspection".

5. Mr. Snow's refusal to move his vehicle intimidated inspectors, place them in fear for their lives and increased the anxiety and tension associated with the inspection on February 19, 1993.

6. Mr. Snow knew or should have know that the presence of a firearm in plain view in the milk house entryway would intimidate the inspectors if the reasons for its presence were not explained. His failure to explain the presence of the firearm increased the tension and anxiety of the inspection on February 19 .

7. Mr. Snow's conduct created a potentially volatile, unpredictable atmosphere that the inspectors perceived to be an unsafe work environment. It is resonable to require changes in Mr. Snow's conduct before a subsequent reinspection so that inspectors are not forced to conduct an inspection in potentially volatile and unpredictable circumstances.

8. The Department has proved by a preponderance of the evidence that Mr. Snow interfered with the inspection conducted on his farm on February 19, 1993, and other inspections that could have been completed that day. Mr. Snow's interference was willful and intended to intimidate the inspectors.

9. Mr. Snow has engaged in conduct that justifies summary suspension of his Grade A milk license. The suspension of Mr. Snow's Grade A milk license is reasonable and authorized by law.

10. Any Finding more appropriately termed a conclusion is hereby adopted as a conclusion. The Administrative Law Judge makes these conclusions for the reasons given in the attached memorandum. Where necessary, reasons contained in the Memorandum are adopted and incorporated herein as Conclusions.

On the basis of the foregoing, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that Mr. Jerry Snow's permit to sell Grade A pasteurized milk be suspended and continue in suspension until Mr. Snow offers assurances in writing that inspectors who make inspections on the Snow farm will not be interfered with whil performing their duties.

Dated: May 28, 1993.

ALLEN E. GILES

Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded (4 cassette tapes)

MEMORANDUM

Interference With Inspection.

The Department has proved by a preponderance of the evidence that Mr. Snow blocked-in the State cars parked in the driveway of the Snow farm. Mr. Snow refused to move his truck even upon a threat to call the sheriff. After the sheriff came on the scene, Mr. Snow admits that he continued to resist. Mr. Snow sought and obtained the date of the reinspection as a condition of his moving the truck to allow egress of the State cars. Finally, Mr. Snow also admits that a rifle was present in the entryway to the milk house.

The applicable law cited in the Conclusions requires a conclusion that Mr. Snow interfered with a dairy inspection. The Administrative Law Judge has concluded that Mr. Snow interfered with the inspection on his farm and with other inspections that could have been completed on February 19 for the following reasons. First, other inspections could have been completed on the afternoon of February 19, 1993. Therefore, Mr. Snow's refusal to allow egress of the State of Minnesota automobiles prevented the inspectors from doing other inspections that would have occurred on the afternoon of February 19. Second, a reinspection was required for Mr. Snow to continue to market Grade A milk. Because of the potentially volatile, unpredictable environment caused by Mr. Snow at his Snow farm, the inspectors believed that an inspection at the Snow farm was unsafe, Mr. Snow has refused to offer any assurances that his conduct will be any different at a subsequent inspection. Therefore, Mr. Snow has interfered with the reinspection required by the Grade A Pasteurized Milk Ordinance.

Finally, the Administrative Law Judge also finds and concludes that Mr. Snow interfered with the inspection to his farm on February 19, 1993. Dairy inspectors must be allowed "access" to the Snow farm to conduct an inspection required for Grade A milk. Access includes both entry onto the property and egress from the property. The inspection on the Snow farm on February 19 was not completed until the Inspectors were allowed to leave the farm with their automobiles that afternoon. Therefore, Mr. Snow interfered with the inspection on his farm on February 19 by not allowing the inspectors to leave with their automobiles.

Willful Interference With the Inspection.

The Administrative Law Judge has also concluded that Mr. Snow's interference was willful and intended to intimidate inspectors. This conclusion is based on the following reasons. First, because of the previous

inspections at the Snow farm, there was a likelihood that there would be some tension and anxiety at the Snow farm at the February 19 inspection. Mr. Snow refused to move his truck after being asked by Mr. Pittman and after communication with the Rock Dell representative. The arrival of the sheriff onto the Snow farm was not enough to get Mr. Snow to move his truck. Not until he exacted a concession from the inspectors - the date of the reinspection - did he move his truck. Mr. Snow intimidated the inspectors by forcing them to provide the reinspection date contrary to Department policy as a condition for retrieval of the State cars. Mr. Snow's refusal to move his truck was intentional and he knew or should have known that this conduct would intimidate the inspectors and increase the tension level at his farm.

Although, the Administrative Law Judge is unable to determine if the rifle was purposely placed in the entryway to the milk house, he is unpersuaded by Mr. Snow's explanation. Mr. Snow's testimony is that the firearm had been left at the milk house the evening before by someone for a pickup by a relative of Mr. Snow. Yet, Mr. Snow must have been aware of the presence of the rifle, in plain view in the entryway to his milk house. He should have known that the presence of the rifle would exacerbate the tension and anxiety of the inspection. Given the potential intimidation factor of the rifle, Mr. Snow owed some explanation of its presence to the inspectors. His failure to remove the rifle from the milk house or explain its presence increased the tension and anxiety of the February 19 inspection.

A.E.G.